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Opposing Viewpoints: **The Sixth Amendment and Child Witnesses**

By Sarah Kroll

A trial can have serious effects on child witnesses. Questioning children about a crime that was committed against them can lead to re-traumatization, defined as feelings that the traumatizing event (such as physical and sexual abuse) is happening to them again. The original traumatizing event, as well as the re-traumatization, can result in lasting physical and mental harm to the health of a child. Children are especially susceptible to re-traumatization to a much greater degree than adults. Making a child face their alleged attacker and answer questions about the traumatic crime against them can cause further harm to them, making their experience and the abuse against them that much worse.

The Sixth Amendment guarantees criminal defendants the right “to be confronted with the witnesses against him.” In *Crawford v. Washington*, the Court held that testimonial hearsay cannot be used unless the declarant (the individual giving the testimony) has been cross-examined by the defendant. The Sixth Amendment does not make a distinction in the ages of witnesses. It sets the law that criminal defendants have the right to confront *all* witnesses against him. *Crawford* does not make a distinction in age. No testimonial evidence can be used against a defendant without the opportunity to cross-examine the witness.

In recent years, the Supreme Court has found some exceptions to the Sixth Amendment and ruling of *Crawford* for child witnesses. The Court recognized how testifying in a courtroom in front of the accused can have a negative effect on a child victim. Instead of asking a child to confront a defendant who has possibly brutally attacked or abused the child, different courts have allowed child witnesses to testify via closed-circuit television, behind screens, or through the testimony of adults. But does this satisfy the Sixth Amendment’s requirement to allow the accused to confront the witnesses against him? It seems undeniable that it does not, but the courts have found in multiple cases that the interest of protecting children outweighs the importance of the adherence to the Sixth Amendment.

Effect on Child Witnesses

Children are vulnerable, but it is not the criminal defendants’ trials that injure the child witnesses. Child witnesses were injured by the crimes against them. This pain and trauma can last a lifetime. Although questioning a child at trial can re-traumatize a child, a defendant’s Sixth Amendment rights must be protected. Criminal defendants have a right to confront and cross-examine the witnesses against them. Child witnesses must be required to testify in the courtroom, confronting face-to-face the criminal defendant who harmed the child.

A child can suffer from trauma because of many different terrible events, including rape, sexual abuse, physical abuse, neglect, and exposure to violence. Trauma can have both short-term and long-term effects on a child. Sexual abuse can result in a large range of negative effects on a child. This includes sexually acting out by looking at

pornographic material, dressing promiscuously, publically exposing themselves, masturbating suddenly, or being sexually aggressive.

These events could also seriously traumatize adults and cause them to experience re-traumatization on the witness stand. Children are more vulnerable and sensitive and may experience more lasting effects from trauma than most adults may, but this does not exempt them from the Sixth Amendment. Criminal defendants do not lose their rights when their crime is against a child.

Interpretation of Confrontation Clause

The courts declared confrontation as face-to-face in the 1980s. In *Coy v. Iowa*, the trial court and the Iowa Supreme Court allowed a screen to be placed in between the child witness and defendant in order to make the child witness feel more at ease. The U.S. Supreme Court reversed, holding that placing a screen between the witness and defendant was a violation of the Sixth Amendment. Justice Scalia held that the right to confrontation meant a “constitutional right to face-to-face confrontation.”

In *Maryland v. Craig*, the Supreme Court again ruled that the Sixth Amendment required face-to-face confrontation. In that case, the trial court allowed four child witnesses to testify via one-way closed circuit television. The child witness, the prosecutor, and the defense counsel were able to question the child in a separate room, while the judge, the jury, and the defendant watched the testimony on a video monitor in the courtroom. The Supreme Court held that “physical presence, oath, cross-examination, and observation of demeanor by the trier of fact” was required.

The Court went on to say, however, that “a State’s interest in the physical and psychological well-being of child abuse victims *may* be sufficiently important to outweigh, at least in some cases, a defendant’s right to face accusers in court.” This statement is in direct conflict with the Court’s previous statements in the same opinion, as well as the Sixth Amendment.

Conclusion

The Sixth Amendment very clearly states that a criminal defendant has the right to confront the witnesses against him. *Crawford* held that testimonial evidence cannot be used against the defendant without the opportunity to cross-examine the witness. *Coy* and *Maryland* held that the right to confront a witness meant face-to-face confrontation in court.

Child witnesses are vulnerable and can have lifelong trauma as a result of the crime committed against them. However, allowing a child to testify behind a screen, in another room, or outside of the court completely violates the Sixth Amendment and Supreme Court precedent. Permitting children to testify in this manner does not take away the trauma they are already experiencing as a result of the abuse or event they are testifying about. Therefore, the Sixth Amendment must guarantee the right to confront your witnesses, even when a witness is a child.

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